

IN THE MATTER OF LICENSES AND OTHER MERCHANDISE DOCUMENTS

Issued to: Frederick C. Parker

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1528

Frederick C. Parker

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 13 January 1965, an Examiner of the United States Coast Guard at Galveston, Texas suspended Appellant's seaman documents for one month outright plus six months on twelve months' probation upon finding him guilty of misconduct. The three offenses alleged were proved by evidence that while serving as First Assistant Engineer on board the United States SS BADGER STATE under authority of the license above described, on 19 September 1964, Appellant was unable, due to intoxication, to perform his duty to prepare the engines for getting under way; on 20 September 1964, he wrongfully had intoxicating liquor in his possession; on 3 November 1964, Appellant failed to perform his duties preparatory to getting under way.

The offenses were proved by the testimony of the Chief Engineer which was accepted by the Examiner as the truth. Appellant admitted possession of intoxicating liquor as alleged, denied that he was intoxicated on 19 September, and claimed that he told the Master he was too tired to get up early on the morning of 3 November after having worked continuously for 24 hours until approximately 2000 on the proceeding night. The Examiner rejected Appellant's denials as to 19 September and his excuse concerning 3 November primarily because Appellant admitted having been ashore drinking, to some extent, prior to each of these two alleged offenses.

On appeal, it is contended that the allegations are not supported by the weight of the evidence; and the Examiner erred in admitting in evidence Official Logbook entries, concerning Appellant's misconduct, which had not been read to Appellant, he had not been given a copy of, and he had not been given an opportunity to reply to.

Esquire of Counsel

APPERANCE: Greenburgh and Schwartz of Galveston, Texas, by K. Ball Withers,
Esquire of Counsel

Opinion

Appellant's contentions are without merit. As to the incident on 19 September at Barcelona,

Spain, the Examiner accepted the Chief Engineer's testimony that he ordered Appellant not to go below to perform his duty, as First Assistant Engineer, to prepare the engines for getting underway because he was intoxicated. Appellant admits that, on the following day at sea, the Master confiscated two unopened bottles of brandy which belonged to Appellant. Assuming Appellant worked for 24 hours until 2000 on 2 November, as he testified, he still had time for almost 7 hours sleep before being required, at 0500 on 3 November, to perform his duty of preparing the engines for getting underway at New Orleans.

Although no further discussion of the sufficiency of the evidence is appropriate in view of the blanket nature of this appeal and the absence of clear error in the record (Attorney General's Manual on the Administrative Procedure Act (1947), p. 84, note 5), it is noted that the omission of statutory requirements with respect to Official Logbook entries does not affect their admissibility and the entries referred to on appeal were not utilized to make out a prima facie case against Appellant. See 46 CFR 137.20-10m.

The seriousness of these offenses when committed by a licensed officer obviously justifies the order of suspension imposed by the Examiner.

Order

The order of the Examiner dated at Galveston, Texas, on 13 January 1965, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 19th day of November 1965.